JURISDICTIONAL DETERMINATION Revised 8/13/04

U.S. Army Corps of Engineers

DISTRICT OFFICE: SAN FRANCISCO
FILE NUMBER: 28560N

PROJECT LOCATION INFORMATION:

State: California
County: Humboldt
Center coordinates of site (latitude/longitude): 40-52-05.8410 124-09-09.8330
Approximate size of area (parcel) reviewed, including uplands: 8 acres.
Name of nearest waterway: Mad River Slough
Name of watershed: Wetlands adjacent to Mad River Slough and Humboldt Bay

JURISDICTIONAL DETERMINATION

Completed:	Desktop determination	[x]	Date: October 25, 2004
	Site visit(s)	[x]	Date(s): August 17, 2004

Jurisdictional Determination (JD):

[x] Preliminary JD - Based on available information, [x] *there appear to be* (or) [ ] *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

[x] Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

[ ] *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

[x] *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 1 acre .

[ ] *There are "isolated, non-navigable, intra-state waters or wetlands"* within the reviewed area.
[ ] Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

[ ] The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

[ ] (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
[ ] (2) The presence of interstate waters including interstate wetlands[1].
[ ] (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
  [ ] (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
  [ ] (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
  [ ] (iii) which are or could be used for industrial purposes by industries in interstate commerce.
[ ] (4) Impoundments of waters otherwise defined as waters of the US.
[ ] (5) The presence of a tributary to a water identified in (1) - (4) above.

[ ] (6) The presence of territorial seas.
[x] (7) The presence of wetlands adjacent[2] to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

The subject of this jurisdictional determination is the vegetated pond located near the northern property boundary of Sierra Pacific Industries' Arcata Division sawmill property. The pond lies 150 feet west of the western margin of Mad River Slough, a navigable water of the United States and a slough that is subject to daily tidal exchange with Humboldt Bay, in Humboldt County, California. In a report by Geomatrix consultants dated February 25, 2004, *Hydrologic Study of Vegetated Pond Area* (which cites a separate report, *Botanical Survey of Proposed Development Sites at the SPI Arcata Mill Facility* as a reference), review of aerial photographs going back to 1942, indicate there is "an essentially contiguous wetland system, dissected by roads and bordered on either side by upland vegetation, extends northwest several hundred meters from the fen (the vegetated pond) to the leading margin of a migrating sand dune sheet". Immediately west of the ponds are undulating coastal sand dunes with intervening hollows. The pond or fen as it is referred to is approximately 0.45 mile or one-half mile from the high tide line of the Pacific Ocean. The pond received water from direct precipitation, groundwater, from drainage ditch number 8 that runs parallel to the old railroad grade (see attached maps) and from runoff from the sawmill. The pond, which is predominantly freshwater with some brackish water, drains directly into Mad River Slough via Drainage Ditch #5 and outfall #5 (maps, in particular the drainage maps). Therefore, I determine that the vegetated pond or fen at the north end of the sawmill property is adjacent to navigable waters of the U.S. (Mad River Slough).

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

[x] Ordinary High Water Mark indicated by:
- [ ] clear, natural line impressed on the bank
- [ ] the presence of litter and debris
- [ ] changes in the character of soil
- [x] destruction of terrestrial vegetation
- [ ] shelving
- [x] other: The pond margin is abrupt, with cattail and other plants in the pond suddenly giving way to coastal dune forest, palustrine forest wetland, and palustrine shrub-scrub wetland (respective species include beach pine, Sitka spruce, grand fir, wax myrtle, California blackberry, and then into broad-leaved cattail). The Ordinary High Water mark appears to be at approximately nine feet above mean lower low water (Geomatrix states in its hydrologic study that the surface elevation of the vegetated pond is approximately 7 feet above mean lower low water.. The hydrologic study by Geomatrix states the vegetated pond was vacant pastureland (it may also have been former tideland before the levee was put in and drainage ditches were constructed).

[ ] High Tide Line indicated by:
- [ ] oil or scum line along shore objects
- [ ] fine shell or debris deposits (foreshore)
- [ ] physical markings/characteristics
- [ ] tidal gages
- [ ] other:

[ ] Mean High Water Mark indicated by:
[ ] survey to available datum; [ ] physical markings; [ ] vegetation lines/changes in vegetation types.

[x] Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

Basis For Not Asserting Jurisdiction:

[ ] The reviewed area consists entirely of uplands.
[ ] Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
[ ] Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
[ ] The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- [ ] Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- [ ] Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- [ ] Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- [ ] Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- [ ] Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).

[ ] Isolated, intrastate wetland with no nexus to interstate commerce.
[ ] Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:

[ ] Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
[ ] Other (explain):

DATA REVIEWED FOR JURSIDICTIONAL DETERMINATION (mark all that apply):

[x] Maps, plans, plots or plat submitted by or on behalf of the applicant.
[ ] Data sheets prepared/submitted by or on behalf of the applicant.
[ ] This office concurs with the delineation report, dated , prepared by (company):
[ ] This office does not concur with the delineation report, dated , prepared by (company):
[ ] Data sheets prepared by the Corps.
[ ] Corps' navigable waters' studies:
[ ] U.S. Geological Survey Hydrologic Atlas:
[x] U.S. Geological Survey 7.5 Minute Topographic maps:
[ ] U.S. Geological Survey 7.5 Minute Historic quadrangles:
[ ] U.S. Geological Survey 15 Minute Historic quadrangles:
[ ] USDA Natural Resources Conservation Service Soil Survey:
[ ] National wetlands inventory maps:
[ ] State/Local wetland inventory maps:
[ ] FEMA/FIRM maps (Map Name & Date):
[ ] 100-year Floodplain Elevation is: (NGVD)
[x] Aerial Photographs (Name & Date): (1) *Aerial Photograph of Site and Vicinity, Sierra Pacific Industries, Arcata Division Sawmill, Arcata, California*, Source: Humboldt State University, Aerial photograph dated December 10, 1997, in Geomatrix report cited above; (2) Color Infrared Stereo-pair, U.S. Army Corps of Engineers, 9" x 9" frame, dated 7-09-85 (3) Color Infrared stereo-pair, U.S. Army Corps of Engineers, 9" x 9" frame, 6-28-80; .and (4) *Aerial Photograph of Lowland Area Prior to Excavation of Vegetated Pond, Sierra Pacific Industries, Arcata Division Sawmill, Arcata, California*, Source; SPI Aerial Photograph circa 1965.
[x] Other photographs (Date): Color ground photographs titled, (1) *Open area in Vegetated pond – December 2003*; (2) *Vegetated Pond Area Discharge Channel Flow into Eroded Hole Near Upstream End of Culvert*, dated 2/26/04; and (3) *Vegetated Pond Area Discharge from Culvert into Mad River Slough under Low Tide Conditions*, dated 2/26/04, all three from "Figures" section of previously cited Geomatrix report.
[ ] Advanced Identification Wetland maps:
[x] Site visit/determination conducted on: August 17, 2004
[ ] Applicable/supporting case law:
[ ] Other information (please specify):

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[1]Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

[2]The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.